

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GREGORY MARK McCARTHY,

Petitioner,

No. C 07-3933 PJH (PR)

vs.

ORDER OF DISMISSAL

IVAN D. CLAY, Warden,

Respondent.

This is a habeas case brought pro se by a state prisoner. Petitioner has, however, had a previous case. See 04-2458 PJH (PR), *McCarthy v. Kramer*. The petition in that case was denied in a ruling entered on March 31, 2008. That petition, like this one, was directed to petitioner's 2000 conviction for arson of an inhabited structure and filing a false insurance claim. This thus is a second or successive petition.

Respondent has moved to dismiss on the grounds, among others, that a second or successive petition cannot be filed without permission from the court of appeals. The motion is unopposed. Respondent's motion for an extension (document 4) is **GRANTED** and the motion is deemed timely.

A habeas petitioner may not file a second or successive petition unless he or she first obtains from the appropriate United States Court of Appeals an order authorizing the filing. See 28 U.S.C. § 2244(b)(3)(A). Petitioner has not obtained such an order from the Ninth Circuit. The motion to dismiss (document number 7) is **GRANTED** and the petition is **DISMISSED** without prejudice. The clerk shall close the file.

IT IS SO ORDERED.

Dated: April 3, 2008.



PHYLLIS J. HAMILTON
United States District Judge